IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 636

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

NEW ENGLAND ELECTRIC SYSTEM ET AL.,
Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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*See Appendix A to this Brief.

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QUESTION PRESENTED FOR REVIEW

The Respondents are dissatisfied with the Petition's statement of the question presented. It seems to imply (i) that the interpretation in this case by the Securities and Exchange Commission of the phrase "substantial economies" is one of long standing and (ii) that the Commission's use of that interpretation has been so extensive and consistent as to entitle it to special consideration by the courts, neither of which is true. The Respondents say that the question presented for review is:

> Do the common words "substantial economies" as used in Clause (A) of Section 11(b)(1) of the Public Utility Holding Company Act of 1935 have their normal meaning, that is, economies which in ordinary business judg-

[1] The time for filing this Brief was extended by the Clerk from November 1 through December 1, 1965.

ment would be regarded as important or significant considering the business to which they relate, the meaning which the Commission, in this case, tacitly assumed for them in connection with Section 2(a)(29) (B) of the Act; or for the purposes of Clause (A) alone are the words to be so construed that economies, however important, are not to be deemed substantial unless their loss would render the additional system incapable of sound and economical operation, a meaning which cannot be found in the words themselves and is not suggested by anything else in the Act?

STATUTE INVOLVED

The Petition's statement of the statute involved (Pet. 2) omits significant sections which were cited and considered by the court below and, to a more limited extent, by the Commission. The following sections of the Holding Company Act are relevant and are set forth in Appendix A to this Brief: Sections 1(b)(4)-(5) and (c), the applicable statement of purposes and policy of the Act; Sections 2(a)(29)(A) and (B), the applicable definitions of an "integrated public-utility system"; and Section 11(b)(1)(A)-(C), the statement of the circumstances and conditions under which additional systems may be retained.

STATEMENT OF THE CASE

The Respondents are dissatisfied with the Petition's "Statement" (Pet. 3) in the following particulars:

1. The description of the lower court's holding and reasoning (Pet. 6) is incomplete and inaccurate. The holding on the question here presented was not based on the narrow grounds stated in the Petition, but rather on a painstaking and detailed analysis of the statute with due consideration of its purpose, its legislative history, its structure and wording, the consideration given it by other courts and by the Commission, and all other relevant factors. Respondents respectfully refer the Court to the

opinion itself (Pet. App. A, particularly pp. 3a-15a and 22a-23a).

2. The account of the proceedings below is seriously inaccurate and misleading in saying that "all parties agreed to consider [the gas companies] as an 'integrated gas utility system' " (Pet. 4), thus implying that findings and a conclusion on this issue and a statement of the reasons for the determination, as required by the Administrative Procedure Act,[2] were unnecessary. The Petition's inaccurate account of the proceedings below, and the Commission's attempt to dispose of this issue by "conceding" it (R. 1256) instead of dealing with it in the normal way, are of particular significance as they obscure critical inconsistencies in the Commission's procedures and holdings in this case.

Whether or not the gas companies constitute a single integrated system was one of the principal issues in the case and was recognized as such at the hearing. It was specified in the Order of Notice in the same terms as the corresponding issue relating to the electric properties (R. 20; also see R. 39-41). Extensive evidence relating to it was introduced. Months after completion of Respondents' affirmative case, the Commission's staff for the first time disclosed its intention at an appropriate time to urge the Commission (R. 772), and in its brief after the hearings were concluded it did urge the Commission, to make the determination. At no time did either the staff or the Respondents even suggest disposing of the issue otherwise than through appropriate findings by the Commission in the regular way.

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[2] "All decisions (including initial, recommended, or tentative decisions) shall become part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof." Section 8(b). 60 Stat. 242 (1946), 5 U.S.C. § 1007(b) (1964).

With respect to the issue of integration of the electric properties (on which the staff, following hearings, did not oppose Respondents' position), the Commission issued its comprehensive Findings and Opinion and Order (R. 27). With respect to the same issue relating to the gas companies, in striking contrast, the Commission issued no findings or opinion but stated that the issue was conceded (R. 1256).

As pointed out in the opinion below, the Commission, in "conceding" this issue, must necessarily have considered economies of $329,400 annually to be "substantial economies" under Section 2(a)(29)(B) of the Act (Pet. 12a n. 8). In ordering divestment the Commission affirmatively found economies of $1,098,600 annually not to be "substantial economies" under Section 11(b)(1)(A). Had the Commission made the necessary findings on the issue under Section 2(a)(29)(B), it would have had to face this fatal inconsistency.

3. The statements that in the instant case the Commission applied the same interpretation of "loss of substantial economies" that it had applied in every other divestiture case under Section 11(b)(1) (Pet. 5), and that under this test over $2,000,000,000 of utility assets have been divested (Pet. 12) are clearly erroneous. The cases in question are listed in Appendix B to the Petition. A careful analysis of them (see pp. 5-7 below and Appendix B to this Brief) discloses that only three of the thirteen cases cited, involving less than 7½% of the total assets divested, even purported to apply the interpretation presented here, and in not one of them does it appear that the interpretation was determinative of the issue. It also appears that the vast majority of the total assets divested were properties which, unlike those in the instant case, were geographically separated from the principal systems involved, and had to be divested under the standards of Clause (B) or (C) of Section 11(b)(1), irrespective of their status under Clause (A).

4. The Petition contains no reference to the fact that the Department of Public Utilities of Massachusetts, the state in which all the Respondent gas companies are located, intervened as a party in the proceedings before the Commission and strongly opposed divestment of the gas companies. The Department's Chairman testified at length to the effect that divestment would not be in the public interest or achieve any benefits, but would result in the impairment of service and the loss of substantial economies, which loss would fall ultimately on consumers. (R. 41-42, 582, 588-94).

ARGUMENT

The Petition suggests that the decision below is erroneous and states three reasons for review: (i) the importance of reinstating the Commission's alleged long-standing interpretation of Clause (A) (Pet. 2, 5, 12); (ii) an alleged direct conflict between the decision below and two District of Columbia decisions (also, apparently, that it is "inconsistent with" a Second Circuit case and, possibly, "at variance with" a Fifth Circuit case) (Pet. 7); and (iii) the alleged impact of this case on "substantial utility interests in all parts of the country" (Pet. 7, 12). None of these reasons is valid.

(i) *The Commission's interpretation is not long-standing and few, if any, assets have been divested under it.*

The Commission's present interpretation of Clause (A) is not, as claimed, a long-standing administrative interpretation[3] under which more than $2,000,000,000, or any other substantial amount, of assets have been divested.

[3] The Petition appears to state several different interpretations, but none of them is long-standing. They are (i) that the economies lost must be "such as to render the additional system incapable of sound and economical operation" (Pet. 2); (ii) that the additional system cannot be operated separately "without the loss of economies so important as to cause a serious impairment" (Pet. 5); and (iii) that the additional system must be "incapable of independent economical operation" (Pet. 12).

Of the cases cited, those involving divestitures of approximately $1,062,800,000 of assets,[4] or more than half, directly contradict the Petition's argument. The interpretation applied was the one set forth by the Commission in *North American,* which was approved on review by the Second Circuit, and followed by the Commission in later cases: namely, a loss of economies which would be important or significant in light of the circumstances. It was basically the same as the interpretation which was adopted by the court below in the instant case, but is now being opposed by the Petitioner. It was stated by the Commission in *North American* in these words:

> "The normal and usual meaning of the word 'substantial' is a meaning connoting 'important'. And we think that this normal and usual meaning is compelled here. The degree of importance must be measured against the vital policy to which Clause (A) is an exception, *i.e.,* the policy of limiting holding companies to the operation of a single integrated public utility system."[5]

In *Engineers,*[6] involving another divestiture of approximately $23,600,000 of assets, the Commission stated an intermediate test—loss which "would seriously impair the effective operations of the systems involved" (not merely be important and yet not necessarily render effective operations impossible); but the actual decision rested on inadequacy of proof.

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[4] See Item 1 in Appendix B to this Brief.

[5] North American Co., 11 S.E.C. 194, 209 (1942); North American Co. v. SEC, 133 F.2d 148, 152 (2nd Cir. 1943), *aff'd on constitutional issues,* 327 U.S. 686 (1946). In contrast to its present unqualified reliance on Senator Wheeler's post-enactment remark (referring to a system so small that it is "incapable of independent economical operation"), the Commission in *North American* viewed his statement as doing no more than shedding "some light on the background", reinforcing the Commission's conclusion that Clause (A) was intended as a "significant standard" and refuting North American's argument that "substantial economies" meant only something more than "purely nominal". 11 S.E.C. at 209.

[6] See Item 2 in Appendix B to this Brief.

Additional divestitures[7] of approximately $750,100,000 of assets are irrelevant for the reason that the evidence in the cases was insufficient under any standard, and the Commission disposed of all of them without stating any interpretation of Clause (A).

The three remaining cases[8] involve divestiture of approximately $146,400,000 of assets, or less than 7½% of the $2,000,000,000 claimed by the Petition. In these three cases only has the Commission stated as its interpretation of Clause (A) a standard similar to its present interpretation, and in none of them does it appear that such interpretation was the determining factor. In *Philadelphia* (chronologically the ninth case on the Commission's list of thirteen and the first to set forth as the Commission's interpretation the test now asserted to have been the basis of the decision in all of them), the opinion on the Section 11(b)(1) question was devoted principally to an analysis of the evidence submitted by the respondent, which the Commission rejected in its entirety. In the second case, *General Public Utilities,* the respondent did not contest divestiture, and in the third case, *Middle South Utilities,* the respondent had submitted no study of any kind to show the economies to be lost by the additional system upon severance.

In brief, Respondents contend that the test now stated by the Commission has not been determinative in any of the administrative decisions cited in the Petition.

(ii) *The Circuits accord.*

As pointed out by the court below (Pet. 6a), there has been some diversity of view expressed by circuit court judges; but there has been no direct conflict in the actual decisions.

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[7] See Item 3 in Appendix B to this Brief.

[8] See Item 4 in Appendix B to this Brief.

The first judicial interpretation of Clause (A) was in the Second Circuit. The court there approved the Commission's interpretation in *North American* noted above: that "substantial" economies means "important" economies and not merely something more than nominal.[9] The court naturally made no reference to the Commission's present interpretation, as it had not then been formulated.

In the second case (*Engineers*),[10] the District of Columbia Court of Appeals adopted the Second Circuit's interpretation in *North American*. However, the principal issue was not the meaning of "substantial" but whether the net effect of divestment could be established by evidence of operational savings through combined operations, without more. On this question the court divided, with the majority approving the Commission's requirement of "a clear and convincing showing that the operational savings through combination would be sufficient to support a finding that such single item of saving would constitute an overall substantial economy." Deciding the case on the inadequacy of the evidence, the majority did not reach the Commission's interpretation of "substantial" as used in Clause (A).[11]

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[9] North American Co. v. SEC, 133 F.2d 148, 152 (2d Cir. 1943), *aff'd on constitutional issues*, 327 U.S. 686 (1946).

[10] Engineers Pub. Serv. Co. v. SEC, 138 F.2d 936, 944 (D.C. Cir. 1943), *cert. granted*, 322 U.S. 723 (1944), *dismissed as moot*, 332 U.S. 788 (1947).

[11] The dissent by Judge Soper suggested that substantial savings in operational expenses can be substantial economies, and so in his dissent (unlike the majority opinion) the standard applied by the Commission had to be considered. Judge Soper's view was that the Commission was "putting it too strongly" to say "that there must be clear and convincing evidence of loss of economies which would seriously impair the efficiency of the systems." 138 F.2d at 945.

In *Philadelphia,* its second case involving Clause (A), the District of Columbia Court of Appeals held that the Commission had not acted unreasonably in rejecting the utility's estimate of increased operating expenses as insufficiently established.[12] The court added, moreover, that as stated in *Engineers,* the mere showing of a material saving in operational expense did not necessarily show the overall situation. The court then went on and agreed that the Commission could find support for its interpretation of "substantial economies" in parts of the legislative history. However, the court did not hold that the Commission's interpretation of "substantial" was correct; for purposes of the decision that was not necessary. The court concluded its discussion as follows:

> " 'Substantial' is a relative and elastic term. Petitioners concede that economies, to be substantial, must be 'important'. We cannot say the Commission's understanding of the term 'substantial economies' is wrong. We construed it similarly in the Engineers case."[13]

In *Louisiana,* the most recent case before this one, the Fifth Circuit expressly rejected the Commission's interpretation of Clause (A) advocated here, and also noted that neither *Engineers* nor *Philadelphia* had accepted that interpretation.[14]

In sum, the Commission's present interpretation has been placed squarely in issue twice—in this case, and in *Louisiana.* Each time it has been rejected. The earlier cases, *North American* and *Engineers,* do not conflict, as they involved a far less severe test. *Philadelphia's* support for the Commission's interpretation is weak: it is

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[12] Philadelphia Co. v. SEC, 177 F.2d 720, 724 (D.C. Cir. 1949).

[13] 177 F.2d at 725.

[14] Louisiana Pub. Serv. Comm'n v. SEC, 235 F.2d 167, 173 (5th Cir. 1956), *rev'd on jurisdictional grounds,* 353 U.S. 368 (1957).

dictum, and the court itself thought it was going no further than it had in *Engineers*. The law under Clause (A) is thus sufficiently settled, and this Court's review is unnecessary.

(iii) *The question presented is not of sufficient general importance to require review.*

The Holding Company Act was adopted in August, 1935. By Section 11(b) the Commission was directed "as soon as practicable after January 1, 1938" to require registered holding companies to comply with the integration and structural requirements imposed by that Section.

Now, thirty years after enactment, the basic purpose of the Act—the rationalization of the gas and electric utility industry—has been fulfilled. Last year the Chairman of the Commission so stated.[15] He also termed the Act a "vestigial duty" of the Commission, but noted that retention of the Act as a duty of the Commission would have the limited effect of inhibiting the rebirth of abuses. This preventive duty is the function of other sections of the Act, not of Section 11, and is not in issue here.

The mere fact that during this entire period, in which on any theory the great bulk, if not all, of the necessary Section 11(b)(1) reorganizations have been accomplished, this Court has not once had to pass on the issue now presented goes a long way in refuting the claim that it is of significant general interest or importance or may be expected to "affect substantial utility interests in all parts of the country" in the future (Pet. 7).

The Petition cites only four "possible future Section 11(b)(1) proceedings" (Pet. 12-13). Three of these are no more than secondary issues left over from Section 11 pro-

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[15] Cary, *Administrative Agencies and the Securities and Exchange Commission*, 29 Law & Contemp. Prob. 653, 655 (1964).

ceedings otherwise completed in the 1940's and early 1950's.[16] The fourth involves a local gas utility service in Wilmington, Delaware and environs.[17] These problems, if such they are, have existed at least since 1938. They are not nation-wide but local. Their continuing existence over the years and the absence of any Commission order with respect to them indicate that they certainly have not been and are not now matters of serious concern.[18]

The Petition also expresses concern over possible problems in one proposed regional combination of utilities, and two proposed joint generating facilities, one of which is apparently only "under discussion" (Pet. 13-15). Two of these matters will not involve the ABC tests of Section 11, but rather the provisions of Section 10, which provide the Commission ample power to prevent the creation of new Section 11(b)(1) problems. In the Commission's own view, the ABC tests of Section 11 are not reached in a Section 10 proceeding, and hence resolution of the problems of possible future combinations does not depend on determination

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[16] See Utah Power & Light Co., 14 S.E.C. 764, 784-85 (1943); Columbia Gas & El. Corp., 17 S.E.C. 494, 522-24 (1944); Middle South Util., Inc., 35 S.E.C. 1, 15 (1953).

[17] Delaware Power & Light Company. See Moody's Public Utility Manual 442 (1965).

[18] See Dean, *Twenty-five Years of Federal Securities Regulation by the Securities and Exchange Commission,* 59 Colum. L. Rev. 697, 741-42 (1959). Further, the Commission itself has recognized that there is no policy in the Act against combined gas and electric operations, a conclusion with which the Court below concurred (Pet. 13a n. 10, 22a-23a.). And see Representative Eicher's statement that a regionally integrated public-utility system like New England Power Association (the former name of New England Electric System) and essentially intrastate holding companies like Pacific Gas and Electric, both of which had electric and gas businesses, are exempted from the elimination provisions of Section 11 of the strict Senate bill. H.R. Rep. No. 1318, 74th Cong., 1st Sess. 49 (1935).

of the question presented in this case.[19] The third matter (the Snake River project) has been before the Federal Power Commission for over ten years.[20] It might, at some time in the future,[21] involve Section 11(b) of the Holding Company Act, but more probably would arise under Section 10. At present it is not possible to predict when, if ever, or in what posture or under what section the case may come up for decision.

(iv) *The decision below is correct.*

The opinion below of the First Circuit is strong and well reasoned. It speaks for itself and few (if any) words are needed here to answer the criticisms voiced in the Petition (Pet. 15-16).

The Petition contends that the lower court erred in not imposing a completely artificial construction on the words "substantial economies", and attempts to support that contention by stating that the court rejected relevant legislative history. This argument is without merit. The opinion below takes fully into account the legislative history (Pet. 6a-9a, 12a, 15a), including the analysis made in the House Managers' Report, Senator Wheeler's prejudiced remarks made after the passage of the Act, and the statements made by Representatives O'Connor and Cooper.

The suggestion that the decision below undermines the major aim of limiting each holding company to a single integrated system ignores the fact that the Act affirmatively requires the Commission to permit the retention of additional systems if they meet the ABC tests. The Court properly examined the language to determine its intent instead of distorting the language to fit an assumed intent.

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[19] See American Gas & Electric Co., 22 S.E.C. 808, 815 (1946).

[20] See Pacific Northwest Power Co., 14 F.P.C. 644 (1955).

[21] See Pacific Northwest Power Co., SEC Holding Co. Act Release No. 15026 (March 3, 1964).

The assertion that accepting the common meaning of the statutory words "substantial economies" does not comport with Congress' intent to provide a definite test of qualification for retention ignores the obvious fact that the test for which the Petition argues is itself indefinite, subjective and difficult of application (See Pet. 6a n. 5, 9a n. 7). The phrase "incapable of sound and economical operation" appears to be no more definite and specific or conducive to voluntary divestiture than the phrase "loss of substantial economies". Each phrase requires some exercise of judgment.

Apparently the Petition's principal complaint is that the lower court declined to follow the Commission's administrative construction of Clause (A). The record of the Commission's construction of the clause, as shown above (pp. 5-7), is not such as to impress a court or to bring into operation what the Petition refers to as "the accepted canons of construction", giving weight to "longstanding administrative construction" (Pet. 15).

Finally, the Petition suggests that the lower court incorrectly relied on what it perceived to be the symmetry of the Act, referring particularly to the fact that the statute combines language drafted in the House, the Senate and in conference. Irrespective of origins, the Act discloses a remarkably clear unity of purpose and coherence of implementation. This kind of symmetry is both relevant and important. The definitions in Section 2(a)(29) governing combinations in a single system first appeared in the House version of the Act, and the Senate and House conferees had these definitions before them when they agreed to insert in Section 11 the present provisions governing combinations of several systems. It would indeed require compelling reasons, not present here, to warrant giving the identical words "substantial economies" different meanings in these two places. In fact, this principle has in the past been recognized by the Commission with

respect to Sections 2(a)(29) and 11(b)(1).[22] It was stated to this Court by the Commission in its reply brief defending its interpretation of Clause (A) in *Engineers:*

> "Indeed the relationship of dependence required for retention is particularly clear in the case of gas properties because the definition of a single integrated system in Section 2(a)(29)(B) applicable to gas properties substantially overlaps the standards of the (A) and (C) clauses of Section 11(b)(1), as they apply to additional systems. Thus it is clear that Congress intended the relationship between a single system and an additional system should be comparable to that between parts of the same system. . . ."[23]

CONCLUSION

The Petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 23, 1965

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[22] North American Co., 11 S.E.C. 194, 214 (1942); Cities Serv. Power & Light Co., 14 S.E.C. 28, 59 (1943); Commonwealth & Southern Corp., 26 S.E.C. 464, 488-89 (1947). See also Lone Star Gas Corp., 12 S.E.C. 286, 295 (1942), and United Gas Improvement Co., 9 S.E.C. 52, 72 (1941).

[23] Reply Brief for Commission pp. 19-20, Engineers Pub. Serv. Co. v. SEC, *cert. granted,* 322 U.S. 723 (1944), *dismissed as moot,* 332 U.S. 788 (1947).

APPENDICES

APPENDIX A

Statute Involved

Sections 1(b)(4)-(5), and (c), 2(a)(29), and 11(b)(1) of the Public Utility Holding Company Act of 1935[1]

Section 1. (b) . . . [I]t is hereby declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

. . .

(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

(5) when in any other respect there is lack of economy of management and operation of public-utility companies or lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

(c) When abuses of the character above enumerated become persistent and widespread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating

[1] 49 Stat. 803-04, 810, 820 (1935), 15 U.S.C. §§ 79a(b) and (c), 79b(a)(29), 79k(b)(1) (1964).

such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.

SECTION 2. (a) When used in this title, unless the context otherwise requires—

. . .

(29) "Integrated public-utility system" means—

(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation: *Provided,* That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

SECTION 11. . . .

(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

APPENDIX B

Classification of Administrative Cases Listed In Appendix B To The Petition.[1]

	Assets Divested
1. Cases stating or following test set forth by the Commission in *North American* (11 S.E.C. 194 (1942)); basically the same test adopted by the court below in this case:	
North American Co., 11 S.E.C. 194, 209 (1942)	$ 659,158,089
Cities Serv. Power & Light Co., 14 S.E.C. 28, 37, 47-48 (1943)[2]	59,995,535
Middle West Corp., 15 S.E.C. 309, 319 (1944)	97,751,921
Cities Serv. Co., 15 S.E.C. 962, 984 (1944)	148,258,253
American Gas & El. Co., 21 S.E.C. 575, 596-97 (1945)	97,684,103
Sub total	$1,062,847,901
2. Proof inadequate but an intermediate test stated, namely, the loss "would seriously impair the effective operations of the systems involved" (12 S.E.C. at 61):	
Engineers Pub. Serv. Co., 12 S.E.C. 41, 57-65, 79-81, 86-88 (1942)	$ 23,571,236
3. Evidence insufficient under any standard and no interpretation of Clause (A) stated by Commission:	
North American Co. (St. Louis Properties), 18 S.E.C. 611, 613-15, 621 (1945)	$ 13,129,400
Peoples Light & Power Co., 20 S.E.C. 357, 380-81 (1945)	182,000
Commonwealth & Southern Corp., 26 S.E.C. 464, 487-90 (1947)[3]	722,259,916

	Assets Divested
Penn. Gas & Elec. Corp., 28 S.E.C. 553, 558 (1948)	$ 2,349,409
Eastern Util. Ass'tes, 31 S.E.C. 329, 348-52 (1950)	12,234,309
Sub total	$ 750,155,034
4. Test similar to Commission's present interpretation stated, but not determinative:	
Philadelphia Co., 28 S.E.C. 35, 46-47, 53-74 (1948)	$ 113,605,913
General Pub. Util. Corp., 32 S.E.C. 807, 814-15, 826-27, 831 (1951)	13,757,386
Middle South Util., Inc., 35 S.E.C. 1, 11-13 (1953)	19,061,622
Sub total	$ 146,424,921
Grand Total	$1,982,999,092

[1] Figures are taken from said Appendix B as they cannot in most instances be verified from the cited cases.

[2] Includes one subsidiary (net assets of approximately $422,000 or only approximately 1% of the assets ordered divested in the case) as to which the Commission said that, although it was small, the record did not show the company was "incapable of economic, independent operation". This was viewed as "*one* of the guides which (*among others*) Congress intended to be used. . . ." 14 S.E.C. at 62. (Emphasis added.) Significantly, this language was not cited in support of the interpretation stated in *Philadelphia*. (See Item 4 above.)

[3] Includes one subsidiary (net assets of approximately $28,000,000 or only approximately 4% of the assets ordered divested in the case) which the utility had agreed to divest and which the Commission held not retainable under Clause (C) but as to which the Commission also quoted the language stated in note 2 above. 26 S.E.C. at 487, 489.